

IN THE UNITED STATES DISTRICT COURT  
STATE OF UTAH

FILED  
U.S. DISTRICT COURT

2010 SEP 15 A 10:30

MICHAEL WATERS

Pro Se

Plaintiff,

vs.

BANK OF AMERICA

(Notice to Agents is Notice to Principles  
Notice to Principles is Notice to Agents)  
Defendant.

CASE NO: 1:10-cv-150

DISTRICT OF UTAH

By:   
DEPUTY CLERK

Magistrate Judge Paul Warner

**MOTION TO COMPEL  
DEFENDANTS' ATTORNEYS  
TO SUBMIT AN AFFIDAVIT  
TO THIS COURT  
STATING WHETHER OR NOT  
THEY ARE REPRESENTING  
THE HOLDER IN DUE COURSE  
AND THE CREDITOR  
IN THIS MATTER**

Plaintiff, Michael Waters, *pro se*, pursuant to, *inter alia*, Rule 1 of the F.R.Civ.P. hereby enters his Motion to Compel Defendants' attorneys; **to submit to this Court an affidavit signed under penalty of perjury by a party under the jurisdiction of this Court**, pursuant to, *inter alia*, F.R.Civ.P. Rule 17(a) stipulating and admitting on and for the record: 1) whether or not they are representing the Holder in Due Course and the Creditor in this matter; 2) are not in actuality acting as a debt collector in this matter

Furthermore, Compel Defendants' attorneys to state on and for the record, what entity, if any, is the Holder in Due Course and the Creditor in this matter.

For clarification purposes, Plaintiff is not asking Defendants' attorneys what entity is the Holder, or if they represent the Holder. Plaintiff has clearly stated he is asking Defendants' attorneys to stipulate as to whether or not they represent the

1 Holder in Due Course and the Creditor in this matter and if Defendants' attorneys  
2 are actually acting as a debt collector.

3 Also for clarification purposes, in this Motion, Defendants is defined as  
4 Defendants and/or their successors and/or the corporation Defendants were and/or  
5 are an officer of, during any aspect of any contingent that was in any way  
6 responsible and/or involved with the non-judicial foreclosure and/or Deed of Trust  
7 and/or this action. This definition is not cause to consider the Defendants'  
8 corporation as a party to this suit as Plaintiff hereby reiterates that Defendants'  
9 corporations were only used by Defendants' as part of a criminal conspiracy to  
10 unlawfully divest Plaintiff of Plaintiff's lawfully owned real property.

11 **WHEREAS**, there are no facts in evidence there was ever a risk of assets by  
12 any Defendant and/or Defendants' corporation in the matter that led to the non-  
13 judicial foreclosure, and ultimately this suit.

14 **WHEREAS**, Defendants' attorneys could not have lawfully commenced a  
15 non-judicial foreclosure against Plaintiff property unless Defendants are and were at  
16 the time of the commencement the Holder in Due Course of the Promissory Note  
17 that was integral to the Deed of Trust.

18 **WHEREAS**, Defendants' attorneys must, pursuant to F.R.Civ.P. Rule 17(a)  
19 ratify the commencement of any proceeding when requested to do so by Plaintiff.

20 **WHEREAS**, this Court has the judicial discretion pursuant to Rule 1 to  
21 Compel Defendants and Defendants' attorneys to assist this Court in the just,  
22 speedy and inexpensive resolution to this matter.

23 **WHEREAS**, F.R.Civ.P. Rule 1 requires all parties to cooperate to secure the  
24 just, speedy, and inexpensive determination of every action and proceeding.

25 **WHEREAS**, if Defendants are not the Holder in Due Course and the  
26 Creditor, the Defendants' attorneys have violated ORS 40.450 Rule 801 4 (a) (A) by  
27 making inconsistent statements to different government agencies.  
28

1       **WHEREAS**, the aforementioned stipulations and admissions by Defendants'  
2 attorneys would achieve a just, speedy and inexpensive resolution to this matter  
3 thereby saving the State's and this Court's valuable and limited resources.

4       **THEREFORE**, this Court should grant Plaintiff's Motion to Compel and  
5 order Defendants' attorneys to submit affidavits under penalty of perjury declaring  
6 on and for this Court's record: whether or not they represent the Holder in Due  
7 Course and the Creditor in this matter; and whether or not they or the Defendants  
8 attorneys are acting as debt collectors.

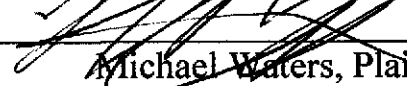
9  
10                               **VERIFIED STATEMENT**

11       The undersigned, Michael Waters, Pro se, and a civilian, herein Plaintiff,  
12 does solemnly declare and state as follows:

13       I am moving this Court to Compel Defendants for ratification of  
14 commencement in furtherance of achieving a just, speedy and inexpensive  
15 resolution to this matter pursuant to Rule 17(a) and in no way do I believe this  
16 Motion to Compel will cause an undue financial burden or harass Defendants and/or  
17 Defendants' attorneys in any way.

18       I believe there is good cause and foundation in law for this Motion to Compel  
19 and absence of an affidavit by Defendants' attorneys as stipulated above will  
20 negatively effect the pursuit of justice and waste the State's and this Court's  
21 valuable and limited resources.

22  
23       DATED: September 15th 2010

24  
25  
26       BY:   
27                               Michael Waters, Plaintiff in Pro Se  
28                               Signed reserving all my rights at UCC 1-308